

HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No.3090 OF 2006

-
-

Between:

K.Rajagopal Rao

.....Petitioner

And

The Union of India, rep. by its
Deputy Secretary, Ministry of Home Affairs,
Freedom Fighters Division, New Delhi
and another.

.....Respondents

:: ORDER ::

Counsel for the Petitioner : Sri T.L. Krishna Prasad

Counsel for Respondent No.1 : Sri A.Rajashekar Reddy,
Asst. Solicitor General.

Counsel for Respondent No.2 : None.

18th January, 2007

This is the third round of litigation by the petitioner in relation to his claim for grant of pension under the Swatantrata Sainik Samman

Pension Scheme, 1980 (for short, 'the 1980 Scheme'). Writ Petition No.22848 of 2004 filed by him for quashing the rejection of his application by respondent No.1 vide letter No.112/6087/97-FF(HC), dated 25-6-2002 was disposed of by the learned Single Judge on 16-6-2005 by directing the said respondent to re-consider the petitioner's case and pass appropriate order within two months. Contempt Case No.1462 of 2005 filed by the petitioner with the allegation of non-compliance of order dated 16-6-2005 was dismissed by the learned Single Judge because, in the meanwhile, respondent No.1 again rejected his claim for pension.

The Facts:

- 1) The petitioner claims that he had participated in the freedom movement for merger of the erstwhile Hyderabad State into the Indian Union during the years 1947 and 1948. As a consequence of this, Nizam's Police registered FIR and submitted report to Munsif Magistrate, Kollapur on 16th Isfandar, 1357 Fasli under Section 155 of the Hyderabad State Criminal Procedure Code. As a sequel to this, warrant of his arrest was issued. In order to evade the arrest, he went underground in Jammalamadaka in Guntur District and then joined the camp at Morrakonda in Kurnool District.
- 2) After promulgation of the 1980 Scheme, the petitioner directly submitted application dated 13-5-1985 to the Government of India for sanction of pension by treating him as freedom fighter. No action appears to have been taken on that application because the same was not accompanied by the relevant documents. After about 12 years, the petitioner submitted representation to the respondents along with the following documents:

1. Certificate issued by ex-Member of Parliament from Kurnool, Sri M.Bishmadev.
2. Certified copy of report dated 6th Isfandar, 1357 Fasli of Sub-Inspector of Police.
3. Extract of Book No.1 (FIR).
4. Arrest Warrant dated 4th Farvardi, 1457 Fasli i.e. 4-2-1947.

3) After getting an enquiry conducted for verification of the genuineness of the documents, the State Government forwarded the petitioner's claim for pension to the Government of India. However, the latter rejected the same on the ground of certain deficiencies in the papers. This was conveyed to the petitioner vide letter dated 25-6-2002.

4) The petitioner represented against the rejection of his claim and clarified the so-called discrepancies in the record produced by him. However, he could not succeed in persuading respondent No.1 to review its decision. He then filed Writ Petition No.22848 of 2004, which, as mentioned above, was disposed of by the learned Single Judge on 16-6-2005 by directing respondent No.1 to pass fresh order. Paragraphs 6 and 7 of that order read as under:

“6. The 1st respondent while rejecting the claim of the writ petitioner has pointed out certain defects in the application sent by him. The defects as noted in the letter addressed to the writ petitioner are as follows:-

1. You have not claimed the specific period of your underground suffering in your proforma application dated May, 1985.
2. In the Proforma application dated May, 1985 you

have furnished the Camp in charge Certificate from Sri K.Krishtam Raju in the Camp situated at Jammala Madaka whereas in the State verification report the name of the Camp in charge has been mentioned as Sri B.Gopala Reddy and the name of the camp has been recorded as Moorakonda of Kurnool.

3. The certifiers have not given the complete particulars of the case in which you had to go underground and the authority who issued warrant of detention order.

7. It appears the writ petitioner has submitted another representation clarifying the discrepancies pointed out by the 1st respondent. A copy of the representation has been placed on record. In such a situation, I deem it appropriate to direct the 1st respondent to consider the representation submitted by the writ petitioner clarifying the discrepancies pointed out in the impugned order. The 1st respondent shall pass appropriate orders on the representation submitted by the writ petitioner within two months from the date of receipt of a copy of this order.”

5) After waiting for some time, the petitioner filed Contempt Case No.1462 of 2005. On receipt of notice of the contempt case, the concerned authority of the Government of India re-considered the petitioner’s claim and rejected the same. This was conveyed to him vide letter dated 3-1-2006, the relevant portions of which are reproduced below:

- “7. Therefore, your claim does not meet the eligibility criteria and evidentiary requirements of the Scheme.
8. Your claim that your case was recommended by the Hyderabad Special Screening Committee has also been examined in the light of the Government’s policy regarding Hyderabad Special Screening Committee recommended

cases and it has been found that:-

(i) There is a difference in the name of your claimed border camp, in that the border camp mentioned in your application and the border camp mentioned in the State Government's verification report are distinct and different from each other, which creates sufficient doubt about the bona fides and genuineness of your claim.

(ii) In your proforma application dated May, you have furnished a Camp in-charge Certificate from Sri K.Kishtam Raju in which the Camp situated at Jammala Madaka whereas in the State verification report the name of the Camp in charge has been mentioned as Sri B.Gopala Reddy and the name of the camp has been recorded as Moorakonda of Kurnool. This discrepancy creates further doubt about the bona fide and genuineness of your claim.

(iii) The certifier has not given the complete particulars of the claimed case as a consequence of which you had to go underground and the authority who purportedly issued warrant of detention order.

9. It is, therefore, regretted that it is not possible to consider your claim favourably for grant of Samman pension. Hence, the same is hereby rejected.

10. However, this Ministry is willing to re-consider your claim if you furnish requisite, acceptable evidence, duly verified, in support of your claimed suffering in accordance with the prescribed provisions, within 30 days of the issue of this letter, failing which the findings of para 9 above will be confirmed."

In this petition, the petitioner has prayed for quashing of communication dated 3-1-2006 and also for issue of a mandamus to the respondents to sanction pension under the 1980 Scheme. He has relied on the judgments of the Supreme Court in **Mukund Lal**

Bhandari v. Union of India^[1] and **Gurdial Singh v. Union of India^[2]** and pleaded that the respondents are bound to sanction pension under the 1980 Scheme keeping in view the fact that Sri K.Kistaiah, against whom arrest warrant was issued along with him, has already been granted pension vide letter No.112/698/98-FF(HC) (F), dated 12-9-2003. In paragraph 8 of his affidavit, the petitioner has averred as under:

“8. I submit that the first respondent granting pensions under the scheme whimsically and without any rationale. It is evident that if this Hon'ble Court keenly peruse the report of Police, Kollapur on 16th Isfandar, 1357 Fasli and in Book Form No.1 in Case No.51 of 57 Fasli, the names of the accused involved in the offence were 1) K. Raja Gopala Rao 2) K.Kistaiah 3) K.Madhava Rao 4) M.Pulla Reddy and 5) P.Venkateswar Rao all are residents of Singotam Village. Out of the above five accused involved in the offence Mr.K.Kistaiah, one of the accused has been granted pension by the first respondent by its Letter No.112/698/98-FF (HC) (F), dated 12-9-2003. The said K.Kistaiah and myself escaped from our village on the same day and participated in the same camps. Therefore, when one co-accused in a case extended benefit under the Scheme, rejecting the application of another co-accused is illegal, arbitrary and against Article 14 of the Constitution of India.”

Along with the affidavit, the petitioner has filed copies of various documents including arrest warrant, personal knowledge certificate issued by Sri N.Bhishmadev, ex-Member of Parliament as also the certificates given by the Camp Incharge, Sri K.Krishnam Raju and Sri B. Gopal Reddy.

In the counter affidavit filed on behalf of the Union of India,
Sri S.D. Kaushik, Under Secretary in the Ministry of

Home Affairs, has spelt out the conditions of eligibility prescribed for grant of pension under the 1980 Scheme. He has also given the details of the recommendations made by the Hyderabad Special Screening Committee constituted by the Government of India. In paragraphs 10 and 11, he has reiterated the reasons set out in communication dated 3-1-2006 and averred that the petitioner is not entitled to pension because the documents produced by him were not treated sufficient for accepting his claim as freedom fighter. In paragraph 15 of his affidavit, Sri S.D.Kaushik has averred as under:

“15. Contention of the petitioner that one Shri K.Kistaiah has been sanctioned pension under circumstances similar to his case is denied. Shri Kistaiah had been sanctioned pension considering his case as one recommended by C.H. Rajeshwara Rao Hyderabad Special Screening Committee in accordance with the then policy, and not on the basis of any claimed warrant of arrest. As submitted in para 8, the petitioner’s claim of being a HSSC-recommended case suffers from serious discrepancies. It is also submitted that on large scale irregularities and illegalities coming to notice, it was decided in January 2006 that no further sanction may be given in any case (till a bona fide and faultless way of proceeding further is approved at the competent level). It has also been decided to review all the cases recommended by C.H. Rajeshwara Rao Hyderabad Special Screening Committee. In this process, the case of Shri K.Kistaiah will also be subject to review.”

Sri T.L.Krishna Prasad, learned counsel argued that the rejection of his client’s claim for pension under the 1980 Scheme should be declared as vitiated by an error of law because the reasons enumerated in communication dated 3-1-2006 are totally irrelevant. Sri Prasad emphasized that the verification report sent by the Government of Andhra Pradesh vide letter dated 11-4-2002 to the

Ministry of Home Affairs and representation made by his client in the context of earlier rejection vide letter dated 25-6-2002 are sufficient to establish the genuineness of his claim and, therefore, a writ of mandamus be issued directing respondent No.1 to sanction pension to him under the 1980 Scheme. Learned counsel laid considerable emphasis on the fact that Sri K.Kistaiah, who was co-accused with the petitioner, has already been sanctioned pension, and argued that the rejection of the petitioner's claim is liable to be quashed on the ground of violation of Article 14 of the Constitution.

Sri A.Rajashekar Reddy, learned Assistant Solicitor General supported the decision of respondent No.1 not to entertain the petitioner's claim and argued that this Court cannot sit in appeal over the decision taken by the competent authority. He conceded that Sri K.Kistaiah, against whom arrest warrant was issued along with the petitioner, has been sanctioned pension under the 1980 Scheme, but submitted that the same is being reviewed by the Government of India.

I have thoughtfully considered the respective arguments and perused the record. I have also gone through the judgments of the Supreme Court in **Mukund Lal Bhandari's** case and **Gurdial Singh's** case (supra) on which reliance has been placed by Sri T.L. Krishna Prasad and the judgments in **State of Maharashtra v. Raghunath Gajanan Waingankar**^[3] and **Union of India v. Avtar Singh**^[4], on which reliance has been placed by Sri A.Rajashekar Reddy.

In **Mukund Lal Bhandari's** case as well as **Gurdial Singh's** case (supra), the Supreme Court emphasized the need for dealing with the claim of freedom fighters with sympathy and observed that the Court should adopt an approach which is consistent with the policy of mitigating the sufferings of freedom fighters. In **Mukund Lal Bhandari's** case, it has also been held that the High Court cannot go

into the sufficiency of proof and this must be left to be decided by the government. In **State of Maharashtra v. Raghunath Gajanan Waingankar**, a two Judges Bench referred to the judgments in **Mukund Lal Bhandari's** case and **Gurdial Singh's** case and observed:

“The High Court exercising writ jurisdiction does not sit in judgment over the decision of the State Government like an appellate authority. Ordinarily, the High Court exercising writ jurisdiction cannot enter into reappreciation of evidence and reverse the findings arrived at by the State Government unless they be perverse or be such as no reasonable man acting reasonably could have arrived at. If the High Court found that the decision arrived at by the State Government was flawed in any way then the High Court should have, after laying down the necessary principles or guidelines or issuing directions, directed the State Government to reconsider the case of the respondent. In no case, the High Court could have in exercise of its writ jurisdiction relaxed the need for full satisfaction of the necessary requirements on the fulfilment of which alone the respondents entitlement to the release of freedom fighters pension depended.”

If the petitioner's case is considered in the light of the propositions laid down in the latter decision, it is not possible to entertain his prayer for issue of a mandamus to the respondents to sanction pension to him under the 1980 Scheme. However, keeping in view the admitted fact that Sri K. Kistaiah, against whom arrest of warrant was issued along with the petitioner, has been treated as freedom fighter for the purpose of the 1980 Scheme and pension has been sanctioned to him, I feel that ends of justice would be met by directing respondent No.1 to once again consider the petitioner's case for sanction of pension in the light of the documents already furnished by him as also the documents annexed with the writ petition and decide the same keeping in view the fact that pension has already

been sanctioned to a similarly situated person namely, Sri K.Kistaiah.

In the result, the writ petition is allowed. The rejection of the petitioner's claim for grant of pension under the 1980 Scheme vide letter dated 3-1-2006 is declared illegal and quashed. Respondent No.1 shall re-consider the petitioner's case in the light of the observations made in this order and pass appropriate order within a period of one month from the date of receipt of certified copy of this order. If the Government of India comes to the conclusion that the petitioner's case is similar to that of Sri K.Kistaiah, then appropriate order be passed for sanction of pension to the petitioner with effect from 12-9-2003 i.e. the date on which pension was sanctioned to Sri K.Kistaiah. In that event, arrears shall be paid to the petitioner within next three months.

G.S.SINGHVI, C.J.

18th January, 2007.

ARS

[\[1\]](#) AIR 1993 SC 2127 = 1993 Supp (3) SCC 2

[\[2\]](#) AIR 2001 SC 3883

[\[3\]](#) AIR 2004 SC 4264 = (2004) 6 SCC 584

[\[4\]](#) (2006) 6 SCC 493